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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,340	10/22/2003	James F. Wilcox	21.003.NP	6654
22147	7590	09/26/2005		
DAVID R MCKINNEY 8 EAST BROADWAY, SUITE 500 UTAH, UT 84111			EXAMINER LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,340

Applicant(s)

WILCOX, JAMES F.

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4-10 and 13-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 11, 12, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the third office action for serial number 10/691,340. This application contains 20 claims numbered 1-20. Claims 2, 4-10 and 13-18 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 11-12 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 1,103,839 to Rellay (of record).

As to claims 1 and 3, Rellay teaches a locking device for multiple section telescope tubes (Figs. 2 and 3) comprising a tube section (3) having an inside; a smaller tube section (2) slidably disposed within the tube section; a clamping assembly (13, 15) attached within the smaller tube section, having a locked position and a release position, the clamping assembly including a ramp block (13), fixedly attached to the smaller tube section, the ramp block having a first ramp surface (14); a release block (15) moveably disposed opposite the ramp block, having a second ramp surface (16) opposite the first ramp surface; a cylindrical roller (19, 20) rollably disposed between the first and the second ramp surfaces, wherein the roller has an eccentric cylindrical cross-section; a release mechanism (24, 27); and a push rod (21) slidably disposed within the smaller tube.

As to claims 11-12 and 19-20, Rellay also teaches all the limitations of these claims since these claims recited limitations similar to those recited in claims 1 and 3.

Response to Arguments

3. Applicant's arguments filed July 11, 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to Rellay'839 as presented on pages 7-8 of the Remarks has been considered but they are not persuasive.

Applicant argued that Rellay does not disclose each and every element of the claimed invention, particularly Rellay does not disclose that the ramp block is "fixedly attached to the smaller tube section" and therefore Rellay cannot be said to be anticipate the claimed invention. The examiner respectfully disagrees: First, as shown on Fig. 2 of Rellay reference, the ramp block 13 as shown is clearly fixedly attached to the smaller tube 2. Second, the ramp block 13 must be fixed in order to allow rollers of Jaw 15 to be rolling on the ramp face 14. Third, the word "fixedly" attached" is word of relative meaning, it can have many shades of meaning from absolutely attached to relatively attached or from absolutely unchangeably attached to relatively unchangeably attached; ordinarily, it is not limited to rigid association of parts and it does not preclude existence of a movable position, it is just not readily removable from. Thus the reference of Rellay clearly shows the ramp block being fixedly attached to the smaller tube section.

With regarding to the argument pertaining to the phrase being with "configured to...", the examiner respectfully submits that the phrase being with "configured to..." does not distinguish the claimed invention from prior art as how it can be configured or what may be configured in order to distinguish from the prior art. Applicant appears to emphasis the difference based on the phrase "configured to release the clamping assembly when..." (claim 1) or "configured to allow free sliding extension of the smaller tube..." (claim 19) or "configured to move in the release direction when..." (claim 11 as amended), which merely recites an intended use of the claimed invention or the functional of the claimed element. However, a recitation of the intended use of the claimed invention or a recitation to perform the intended function must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use and/or function, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In this case the device of Rellay is clearly capable of performing the intended use and/or can be configured to perform a the intended use/function as claimed if so desired.

In view of the above argument, the examiner respectfully submits that the claims as recited by Applicant are clearly met by Rellay. The claims therefore still stand rejected as being anticipated by Rellay.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3632

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
September 20, 2005.



ANITA KING
PRIMARY EXAMINER